

IN THE UNITED STATES COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

ERICK RIVAS-JIMÉNEZ,

Defendant.

CRIM. No. 21-373 (SCC)

OPINION AND ORDER

Erick Rivas-Jiménez has moved the Court to hold a *Carbone* hearing to review the audibility of recordings that the government intends to use at trial. Docket No. 21.¹ He objects to them because “the[ir] poor quality . . . makes them inaudible in most part and misleading in relation to the small segments which can be heard.” *Id.* at 2. The government submitted them for an *in camera* inspection, which we did.

The Court “has broad discretion in ruling on the admissibility of tape recordings, even where portions of tapes

1. Rivas-Jiménez also asked the Court to review transcripts of the recordings to verify their accuracy. Docket No. 21, pg. 2. But as we said earlier, Docket No. 26, pg. 2, because he has not yet seen the transcripts, he has no basis to object to their accuracy.

are unintelligible.” *United States v. Font-Ramírez*, 944 F.2d 42, 47 (1st Cir. 1991). The First Circuit has long followed the rule that “where a tape recording[’s] [admissibility] is challenged on the grounds of audibility the question is whether ‘the inaudible parts are so substantial as to make the rest more misleading than helpful.’” *United States v. Carbone*, 798 F.2d 21, 24 (1st Cir. 1986). We have reviewed these recordings and find that although there are some portions where the volume is low, the quality overall is acceptable and these portions do not render the rest of the recording more misleading than helpful. Therefore, the Court **DENIES** Rivas-Jiménez’s motion for a *Carbone* hearing (Docket No. 21). But our decision is narrow: All we have decided is that we will not exclude the recordings from trial on audibility grounds. We have not ruled on the recordings’ admissibility.

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 28th day of April 2022.

S/ SILVIA CARREÑO-COLL

UNITED STATES DISTRICT COURT JUDGE